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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,388	08/22/2006	Joanne Lynsey Morgan	MORGAN-1 PCT	9005
25889	7590	10/16/2007		
WILLIAM COLLARD COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			EXAMINER HALE, GLORIA M	
			ART UNIT	PAPER NUMBER
			3765	
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			10/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/584,388

Applicant(s)

MORGAN, JOANNE LYNSEY

Examiner

Gloria Hale

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6-23-06/8-22-06</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-10 are replete with an excessive amount of alternative recitations claiming component parts of the invention that are not structurally equivalent. Throughout claims 1-10 the recitations of "preferably", "of the type specified" and "and possibly" all render the claims indefinite and unclear. These recitations should be avoided and positive recitations should be used. Claims 1-4 and 7-9 should all begin with "A breast support apparatus". In claim 1, line 2 "being reusable" is a functional recitation that claims no structural element and it is not clear as to what the metes and bounds of the recitation is. Throughout claims 1-10 the recitation "sling or wrap material" is not structurally equivalent. Each term can mean something different rendering the claim indefinite with no solid metes and bounds. The recitation "Arranged in use to lift and support" is also a functional recitation wherein it is not clear as to what structure is being claimed. The recitation "from the garment or the body" is also not structurally equivalent and it is not clear as to what structure is being claimed. It is not clear as to what "garment" is being claimed. The garment should be adequately claimed in combination with the sling if one does not want to claim a garment. If the sling is attached to a wearer's body the

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attachment means should be clearly claimed. The recitation "being able to support and suspend" is also a functional recitation where it is not clear as to what is being claimed or as to what the metes and bounds of the claims is and as to what the location is.

Claim 2 is indefinite and unclear for the same reason as stated above in regard to the "sling or wrap material", "Adapted to support", "and preferably", "can be arranged" and it is not clear as to how the sling suspends both breasts. The terms elasticated or stretchable are not structurally equivalent. Materials can be stretchable without being elasticated but all elasticated materials are stretchable. It is not clear as to how the material "can grip the breast" since no structure has been claimed. It is not clear as to what "to not have a rigid or preformed shape" encompasses. There are not equivalent terms and it is not clear as to what structure is being claimed. Parentheses should be removed from the claims since it is not clear if these terms are included in the limitations or not. It is not clear as to what the padding encompasses or as to what a "suitably shaped insert or inserts" encompasses and as to how they are readily removable from the sling and replaced with a different size/sizes. It is not clear as to what the inserts encompass to be in different sizes. If it is a pocket with pads it should be positively claimed as such.

In claim 3 the parentheses should be removed. All of the alternative language with multiple alternatives renders the claim indefinite. The same terms discussed above in regard to claims 1 and 2 are in claim 3 and are indefinite and unclear. Claim 4 is indefinite in line 3 in regard to "close to". The metes and bounds of "close to" is not clear. The recitation "connected closely adjacent to one another" is not clear. If the

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ends are connected they should be clearly claimed and if not the connection needs to be positively defined. It is not clear if a garment is being claimed in combination with the sling and as to what it encompasses. "Or the like" is indefinite. Claim 5 is not clear since "of the type specified" is indefinite. It is not clear as to what the strapless breast support apparatus encompasses. Claim 6 is not clear for the same reasons as stated above in regard to the alternative and indefinite terms of "re-usable", "sling or wrap", "of the type specified" and "the location or locations". Claims 7-9 are not clear for the same reasons as stated above in regard to the same listed terms. Also in claim 9 "encircling" or "partially encircling" is unclear and indefinite. In regard to claim 10, such as a bikini top is not clear. It is not clear if it is being claimed or not. Displaceable or deformable are also not structurally or functionally equivalent and should be removed. It is not clear as to what "diagonally inverted or inclined" encompasses or as to where the strap is located as claimed.

However, the claims, as best understood, have been examined on their merits

.Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Laszlo (US 2,475,624).

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Laszlo discloses a bra with cups 9 and a sling 8 as the support apparatus to support at least one or two breasts. The apparatus is reusable and is suspended from the brassiere underneath the garment. The sling is flexible and grips under the breasts. Any language in the claims that is after the terms "preferably" and possibly has not been given patentable weight since those limitations have not been positively claimed. The sling is removably attached to the brassiere by fasteners of a button and buttonholes and is therefore also adjustable with the different buttons. The sling is attached at the shoulder straps as claimed Laszlo inherently discloses the method of supporting the breasts with the sling attached to the interior of the brassiere as discussed above. (See Laszlo, figures 1-3; with sling 8, buttons 25 and holes 20, shoulder strap 18 and cups 9; col. 1, line 43- col. 2, line 52).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria Hale whose telephone number is 571-272-4984.

The examiner can normally be reached on Tues.-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on 571-272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Gloria Hale
Primary Examiner
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